

## Message Text

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ACTION L-03

INFO OCT-01 EUR-25 ISO-00 AF-10 DODE-00 H-03 PM-07 NSC-10

SPC-03 SS-20 RSC-01 CIAE-00 INR-10 NSAE-00 OMB-01

DRC-01 /095 W

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R 181400Z DEC 73

FM AMEMBASSY MADRID

TO SECSTATE WASHDC 7564

INFO JUSMG/MAAG SPAIN

16TH AF TORREJON AB SP

COMNAVACTS

CINCUSAFE

CINCEUR

CINCUSANAVEUR

C O N F I D E N T I A L MADRID 7486

E.O. 11652: GDS

TAGS: MILI SP

SUBJECT: OFFICIAL DUTY IN HOME TO WORK CASES

REF: STATE 231716 NOV 73

1. BASIS FOR U.S. POSITION IN TO-AND-FROM-WORK CASES, AS OUTLINED IN PARAGRAPH 4 OF REFTTEL, HAS BEEN PRESENTED TO SPANISH ORALLY AND IN WRITING. CONSISTENT SPANISH RESPONSES AT PERMANENT SECRETARIAT LEVEL LEAVE NO DOUBT THAT SPANISH UNDERSTAND FULLY BUT REJECT VALIDITY OF U.S. POSITION. THEY EMPHASIZE THAT RECOGNITION OF DUTY STATUS FOR PURPOSES OF WORKMEN'S COMPENSATION IN TO-AND-FROM-WORK CASES UNDER SPANISH LAW APPLIES ONLY TO CIVILIAN WORKERS OF CIVILIAN EMPLOYERS AND HAS NO APPLICATION, EVEN BY ANALOGY, TO STATUS OF MILITARY PERSONNEL FOR PURPOSES OF CRIMINAL JURISDICTION.

2. THEY APPRECIATE U.S. DESIRE TO APPLY PRINCIPLE UNIVERSALLY FOR U.S. FORCES IN ALL COUNTRIES BUT CONSIDER  
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THEMSELVES POLITICALLY UNABLE TO ACCEPT U.S. POSITION SOLELY ON THIS BASIS. ACCEPTANCE OF U.S. POSITION BY OTHER

COUNTRIES SUCH AS TURKEY FAILS IMPRESS SPANISH OFFICIALS, WHO TEND TO REJECT COMPARISONS TO STATUS OF FORCES IN NATO COUNTRIES WHICH HAVE ENTIRELY DIFFERENT TYPE OF DEFENSE RELATIONSHIP WITH U.S.

3. WITH REGARD TO DIPLOMATIC STATUS FOR CERTAIN SPANISH MILITARY PERSONNEL IN CONNECTION WITH COMBAT GRANDE, TH\*Y POINT OUT; THAT SUCH STATUS IS APPLICABLE TO SMALL NUMBER OF PERSONNEL; WHEREAS RECOGNITION OF OFFICIAL DUTY STATUS DURING TRAVEL TO AND FROM WORK WOULD APPLY TO THOUSANDS OF U.S. PERSONNEL OF ALL RANKS AND IS CLEARLY NOT AN ANALOGOUS SITUATION. FINALLY, SPANISH OFFICIALS HAVE REPEATEDLY NOTED THAT SUCH STATUS IS NOT GRANTED BY GOS TO SPANISH MILITARY PERSONNEL IN SPAIN NOR BY U.S. TO U.S. FORCES PERSONNEL IN U.S.

4. NEVERTHELESS, DESPITE THEIR UNWILLINGNESS TO ASSENT GENERALLY TO U.S. PROPOSITION REGARDING THE OFFICIAL NATURE OF TRAVEL TO AND FROM WORK, SPANISH OFFICIALS PREVIOUSLY AGREED TO ACCEPT THE OFFICIAL DUTY CERTIFICATION IN NEARLY ALL SUCH CASES IN RETURN FOR U.S. AGREEMENT TO REFRAIN FROM CERTIFYING SUCH CASES AS OFFICIAL DUTY FOR CLAIMS PURPOSES. THIS AGREEMENT HAS RESULTED IN ACQUIESCENCE IN U.S. OFFICIAL DUTY CERTIFICATION IN ALL BUT TWO OF THE 25 TO-AND-FROM-WORK CASES TO DATE. IN THE RODWAY CASE U.S. OFFICIALS CHOSE TO WITHDRAW OFFICIAL DUTY CERTIFICATE. IN PENDING FREE CASE, WE CONSIDER THAT WAIVER OF PRIMARY U.S. JURISDICTION IS PREFERABLE SINCE PROCEDURE PROVIDES BETTER PROTECTION FOR CONTINUED RECOGNITION OF TO-AND-FROM-WORK/OFFICIAL DUTY POSITION WHILE IN NO WAY PREJUDICING U.S. OFFICIAL DUTY POSITION GENERALLY. SPANISH OFFICIALS EMPHASIZE THAT ONLY CERTAIN "SERIOUS" TO-AND-FROM-WORK CASES (WHICH THEY CURRENTLY DEFINE AS THOSE INVOLVING THE DEATH OF A SPANISH NATIONAL) WILL RESULT IN NON-ACQUIESCENCE IN U.S. OFFICIAL DUTY CERTIFICATION.

5. CLEARLY, SPANISH POSITION ON THIS ISSUE REMAINS FIRM. THAT IS, THEY WILL ACCEPT OFFICIAL DUTY CERTIFICATIONS IN  
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TO-AND-FROM-WORK CASES ONLY TO EXTENT THEY DO NOT INVOLVE CERTAIN "SERIOUS" INCIDENTS AND THEN ONLY IN RETURN FOR U.S. AGREEMENT TO REFRAIN FROM CERTIFYING TO-AND-FROM-WORK CASES AS OFFICIAL DUTY FOR CLAIMS PURPOSES: UNDER THIS PRACTICE GOS HAS ACC\*PTED U.S. OFFICIAL DUTY CERTIFICATION IN 92 PERCENT OF THE TO-AND-FROM-WORK CASES. WAIVER OF JURISDICTION IS GRANTED IN 80 PERCENT OF ALL DUTY AND NON-DUTY CASES. FURTHER DISCUSSION OF THE TO-AND-FROM-WORK ISSUE TO ACHIEVE A POSITION MORE FAVORABLE TO THE U.S., PRIOR TO NEGOTIATION OF THE NEW AGREEMENTS, WOULD

YIELD LITTLE. WITH THIS IN MIND, RESOLUTION OF FREE CASE  
WILL REQUIRE EITHER WAIVER OF JURISDICTION BY U.S. AFTER  
ACCEPTANCE OF OFFICIAL DUTY CERTIFICATE BY SPANISH, OR  
WITHDRAWAL OF DUTY CERTIFICATE IN THAT CASE. IN SUM, WE  
CONTINUE TO FEEL THAT LEGAL BASIS FOR U.S. POSITION IS  
TENUOUS AND THAT, IF IT IS TO BE PRESERVED TO ANY EXTENT,  
U.S. MUST BE WILLING TO COMPROMISE IN A LIMITED  
NUMBER OF CASES EITHER BY WITHDRAWING CERTIFICATION OR BY  
WAIVING JURISDICTION.

6. FINALLY, WE RELUCTANT TO PRESS POSITION EXPRESSED IN  
PARA 6 OF REF AS TO U.S. INABILITY TO CONCUR IN TRIAL OF  
U.S. CITIZENS FOR SOLELY "POLITICAL" REASONS, SINCE SPAIN'S  
AGREEMENT TO WAIVE ITS PRIMARY JURISDICTION OVER CERTAIN  
OFFENSES AT OUR REQUEST IS ALSO BASED ON "POLITICAL"  
FACTORS INVOKED BY U.S. USG RESPONDS TO POLITICAL  
SENSITIVITIES IN CONGRESS AND ELSEWHERE IN INSISTING ON  
JURISDICTION IN SUCH BORDERLIN OFFICIAL DUTY CASES.  
SOMEWHAT INCONSISTENT THEN TO CHIDE SPANISH FOR SEEKING  
TO APPLY THEIR OWN JURISDICTION--AS ENVISAGED BY AGREEMENT--  
IN SERIOUS CASES IN WHICH THERE ARE ANALOGOUS SPANISH  
POLITICAL SENSITIVITIES. IN DISPUTED CASES, SPANISH  
OFFICIALS NOT PRIMARILY INTERESTED IN TRYING CASE BUT  
IN RIGHT OF DECISION A  
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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
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**Concepts:** MILITARY PERSONNEL, LAW, PROVINCIAL COURTS  
**Control Number:** n/a  
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**Draft Date:** 18 DEC 1973  
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**Disposition Approved on Date:**  
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**Disposition Case Number:** n/a  
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**Disposition Date:** 28 MAY 2004  
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**TAGS:** MILI, SP  
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